Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 88 of 2004

U.P. State Road Transport Corporation
Through its Regional Manager,
Dehradun.

…. Appellant.

Versus

Pitambar, S/O Sri Ram Singh
R/O Village Kavli,
District Dehradun. **….. Respondent.**

Sri Ashish Joshi, Advocate, learned counsel for the appellant.
Sri T.A. Khan, Advocate, learned counsel for the respondent.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S. Verma, J.

Date December 13, 2004.

(Per Hon'ble B.S. Verma, J.)

This appeal under Section 173 of the Motor Vehicles Act, 1988 **(*for short the Act)*** against the judgment and award, dated 9-12-2003, passed by the Motor Accident Claims Tribunal/Addl. District Judge, IV F.T.C. Dehradun, in Claim Petition No. 156 of 2001, whereby the learned Tribunal awarded compensation of Rs. 2,30,000/- against the appellant.

Brief facts were that the claimant sustained grievous injuries on 17.6.1991 at about 8-30 p.m. at Saharanpur Road, Dehradun, due to rash and negligent driving by the driver of Roadways Bus No. UGA-9456. The claimant suffered 50% disability in his right leg, hence claim petition was preferred for compensation.

O.P.No.1-appellant contested the petition by filing its written statement, alleging therein that Soban Singh was its driver, who was driving the bus cautiously at slow speed. Suddenly near

Claimant Town Tri-crossing, the claimant accompanied by two pillion riders came rashly and negligently on scooter without putting on its light, who lost control over his scooter and dashed against the bus, with the result the two persons sustained injuries. The injured were brought to hospital by the police personnel. The driver of the bus has filed separate written statement by taking similar pleas.

Learned Tribunal framed as many as five issues. On Issue Nos. 1, 2 and 3, it held that accident occurred due to rash and negligent driving by the driver of the offending bus and not on account of rash and negligent act on the part of the injured and that the claimant suffered 50% disability due to injuries sustained by him. Ultimately, the Tribunal accepted notional income of Rs. 15000/- per annum of the claimant. The age of the claimant was taken 45 years, therefore, multiplier of 13 was applied to calculate the loss of income, i.e. Rs. 1,95,000/-. In addition to it, the Tribunal awarded sums of Rs. 35,000/- towards medical expenses, etc, thereby total compensation of Rs. 2,30,000/- was awarded along with interest @ 6% per annum from the date of award.

In support of appeal, it was contended on behalf of the appellant that finding on the point of rash and negligent driving is not supported by the evidence on record and that the petition was not maintainable for non-joinder of owner and insurer of scooter No. DEK-7454. The record reveals that the claimant filed copy of F.I.R., Ext.-2, copy of charge-sheet, Ext. 3, Injury report, Ext. 4, disability certificate, Ext. 5 etc. Claimant examined himself in oral evidence. As against this, the opposite-parties examined conductor and driver of the bus, D.W.1, Salim Ahmad, and D.W. 2, Soban Singh. Certified copy of the judgment and order showing acquittal of the driver in a case under Section 279,337,427 and 304-A IPC has been filed. From a close scrutiny of the testimony of both D.W.1 and D.W.2, it appears that they were trying to escape from their liability. The fact that after investigation of the case, police submitted charge-sheet against the driver of the offending bus was prima facie

sufficient to hold that it was the negligence on the part of the driver of the bus. The contention of the appellant that three persons were sitting on the ill-fated scooter was not substantiated by any evidence. There is another important circumstance which goes against the appellant is that the driver of the bus was also charge-sheeted for the offence under Section 427 I.P.C. It shows that damage was caused to the scooter as well. Having considered the entire evidence regarding negligence available on record, the balance of evidence tilts in favour of the injured-claimant and it can be safely held that the accident occurred due to rash and negligent act on the part of the bus driver. Had the bus driver been innocent, he would have lodged the F.I.R. himself, because according to him the scooterist escaped from the scene of accident. Moreover, there is nothing to indicate that the driver reported the matter to his higher authorities. All these circumstances coupled with the F.I.R., the charge-sheet, injury report etc. were prima facie sufficient to prove that the accident was caused due to rashness and negligence on the part of the bus driver. The learned Tribunal rightly held the bus driver responsible for the accident. In any view of the matter, we are unable to take a different view on this point.

Once it was found that accident occurred due to rash and negligent driving by the driver of the offending bus, it was immaterial to examine the case regarding impleadment of owner and insurer of the said scooter, therefore, the contention of the appellant is not tenable.

Now, there remains the only point for consideration whether the quantum of compensation of Rs. 2,30,000/- was adequate and just considering the 50% disability of the claimant. In the claim petition the age of the claimant was mentioned 38 years but in the injury report, his age was mentioned to be 45 years. Regarding his income, the claimant stated that he was getting Rs. 200/- per day from his employment in a private factory thereby earning Rs. 6,000/- per month. No documentary evidence was led to

substantiate the income of the injured, therefore, the Tribunal took notional income of Rs. 15,000/- per annum for the purposes of determining compensation. 50% disability of the claimant was not seriously challenged by the appellant. Disability certificate, Ext. 5, shows that claimant suffered injuries in his right leg. Learned Tribunal awarded compensation of Rs. 1,95,000/- for loss of income and in addition to it, further sums of Rs. 15,000/- towards medical expenses, Rs. 5,000/- towards grievous injuries and Rs. 15000/- towards loss of income for one year, thereby total compensation of Rs. 2,30,000/- was awarded.

It was urged on behalf of the appellant that the learned Tribunal accepted 50% disability but while awarding compensation, amount was not reduced to the half extent. On the other hand, it was submitted on behalf of the respondent that due to the injuries suffered by the claimant in his right leg, the claimant has become incapable for all practical purposes and has totally lost the prospect of being employed in a factory. It was further submitted that claimant was entitled to the interest on the compensation amount. We have considered the submissions of both the parties. We are of the considered view that in the peculiar circumstances and the facts of the case, it will be just and proper to assess the income of the claimant at Rs. 2,000/- per month, as he was a workman in a factory. Thus, the annual income of the claimant comes to Rs. 24,000/-. Considering 50% disability, annual loss comes to Rs. 12,000/-. The claimant falls in the age group of 45-50 years, therefore, by applying multiplier of 13, total amount of compensation comes to Rs. 12,000/- x 13 = 1,56,000/-. The claimant shall also be entitled to sum of Rs. 15,000/- towards medical expenses, Rs. 5,000/- towards grievous injuries and Rs. 15,000/- towards loss of amenities of life etc. Thus, the total amount of compensation comes to Rs. 1,91,000/-. Learned Tribunal awarded compensation from the date of order and that too, in default of payment of compensation within a period of three months. In our view, claimant can be awarded the interest @ 6% per annum from the date of filing of claim petition till payment. To

this extent, the judgment and award, under appeal, is liable to be modified.

The appeal is partly allowed. The judgment and order of the learned Tribunal is modified to the extent that the compensation is reduced to Rs. **1,91,000/-**(one lac ninety-one thousand) only instead of Rs. 2,30,000/- as awarded by the Tribunal. The claimant-respondent shall be entitled to interest @ 6% per annum from the date of filing of claim petition till payment.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal Udham Singh Nagar, for being paid to the claimants.

(B.S. Verma, J.) **(Irshad Hussain, J.)**

RCP